

**UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF MASSACHUSETTS**

**ARIAD PHARMACEUTICALS, INC.,  
MASSACHUSETTS INSTITUTE OF  
TECHNOLOGY, THE WHITEHEAD  
INSTITUTE FOR BIOMEDICAL RESEARCH,  
and THE PRESIDENT AND FELLOWS OF  
HARVARD COLLEGE**

**Plaintiffs,**

**v.**

**ELI LILLY AND CO.,**

**Defendant**

**Civil Action No. 02 CV 11280 RWZ**

**PLAINTIFFS' MOTION TO COMPEL LILLY TO OFFER A TIMELY DATE  
FOR DR. RICHARD GAYNOR'S DEPOSITION**

This Court allowed Plaintiffs' Motion to Compel the Testimony of Dr. Richard Gaynor on March 14, 2005. At the April 6, 2005 scheduling hearing, Lilly argued that the Court should set May 31, 2005 as the absolute deadline for any fact discovery cleanup. Since then, Lilly has offered to make Dr. Gaynor available only in June.

Initially, Lilly offered April 28, 2005 for Dr. Gaynor's deposition, but stated that alternatively he might be available in May. *See* Exhibit A, Letter from Baldwin to Sennik, March 28, 2005. Scheduling conflicts prevented Plaintiffs from accepting the April 28<sup>th</sup> date. Plaintiffs therefore suggested that Dr. Gaynor's deposition take place in May. *See* Exhibit B, Letter from Sennik to Baldwin, March 31, 2005. Only after the April 6, 2005 scheduling hearing, Lilly proposed June 8, 2005 as an alternative date for Dr. Gaynor's deposition. *See* Exhibit C, Letter from Baldwin to Sennik, April 7, 2005. Lilly has been unwilling to provide an

alternative date in May. *See* Exhibits D & E, Letters between Baldwin and Drozdoff, April 13 & 20, 2005. Lilly maintains that June 8, 2005 is an appropriate date for Dr. Gaynor's deposition. *See* Exhibit F, Letter from Baldwin to Sennik, April 29, 2005)

The Court has already noted that fact discovery is closed. Plaintiffs wish to avoid any misunderstanding with the Court or take any action that would violate the Court's previous discovery orders. Plaintiffs therefore respectfully request an order either compelling Lilly to provide Dr. Gaynor's deposition in May, or in the alternative, allowing Dr. Gaynor's deposition to go forward in June as an exception to the May 31 deadline for fact discovery cleanup that Lilly proposed.

#### LOCAL RULE 7.1 CERTIFICATION

Counsel for Plaintiffs hereby certify that it has conferred with counsel for Defendant Lilly and has attempted in good faith to resolve or narrow the issues presented in this motion. The most recent conference was held on April 28, 2005.

Dated April 29, 2005

Respectfully Submitted

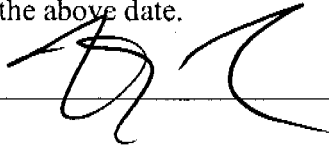
By: 

Leora Ben-Ami  
Patricia A. Carson  
Thomas F. Fleming  
Vladimir Drozdoff  
KAYE SCHOLER LLP  
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Lee Carl Bromberg BBO# 058480  
Kerry L. Timbers, BBO# 552293  
BROMBERG & SUNSTEIN LLP  
125 Summer Street  
Boston, MA, 02110  
Tel: (617) 443-9292

**CERTIFICATE OF SERVICE**

I hereby certify that I served a copy of the foregoing document by hand delivery and Federal Express upon counsel of record for defendant on the above date.

  
A handwritten signature in black ink is written over a horizontal line. The signature is stylized, with a large 'A' and a 'C' being the most prominent features.



MAR-28-05 10:51 From: MCDONNELL 3128035570

T-673 P.02/02 Job-733



McDonnell Boehnen Hulbert & Berghoff LLP

300 South Wacker Drive 312 913 0001 phone  
Chicago, Illinois 60606-6709 312 913 0002 fax  
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March 28, 2005

**VIA FACSIMILE (212) 836-8689**

Mr. Sumir Sennik  
Kaye Scholer LLP  
425 Park Avenue  
New York, NY 10022-3598

Re: ARIAD Pharmaceuticals, Inc., et al. v. Eli Lilly and Company  
Civil Action No. 02-11280-RWZ

Dear Sumir:

Dr. Gaynor is available for deposition on Thursday April 28, 2005 in Indianapolis, Indiana. Please let me know as soon as possible if this date is acceptable so that I may confirm the date with Dr. Gaynor.

Please note that Dr. Gaynor is traveling extensively throughout the month of April. Therefore, if this proffered date does not work, we may be unable to offer an alternative time for Dr. Gaynor until some time in May.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alison J. Baldwin".

Alison J. Baldwin  
312 913 0001  
baldwin@mbhb.com

AJB/yb

MAR-28-05 10:55 From: MCDONNELL 3128035570

T-673 P.01/02 Job-733



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## Fax transmittal

To	Sumir Sennik	Date	March 28, 2005
Company	KAYE SCHOLER LLP	From	Allison J. Baldwin
Fax	(212) 836-8689	Direct	(312) 935-2369
Phone	(212) 836-8000	Email	baldwin@mbhb.com
Pages, with cover	2	C/M	17/40
Re	ARIAD Pharmaceuticals, Inc., et al. v. Eli Lilly and Company		

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KAYE SCHOLER LLP

Sumir Sennik  
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ssennik@kayescholer.com  
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212 836-8000  
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March 31, 2005

VIA FACSIMILE

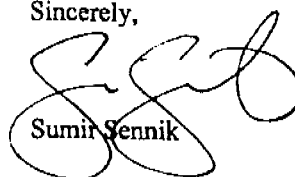
Alison Baldwin  
McDonnell Boehnen Hulbert & Berghoff LLP  
300 South Wacker Drive  
Chicago, IL 60606

Re: ARIAD et al. v. Eli Lilly, Civil Action No. 02 CV 11280  
RWZ

Dear Alison:

Thank you for your letter of March 28, offering Dr. Gaynor as a deponent on April 28, 2005. Unfortunately, this date conflicts with various scheduling obligations. I understand that Dr. Gaynor's travel schedule will make it difficult to schedule his deposition in April. Plaintiffs therefore propose that Dr. Gaynor's deposition be scheduled for early May. Please let me know if this is possible.

Sincerely,

  
Sumir Sennik

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## FAX COVER SHEET

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Alison Baldwin	312-913-0002	312-913-0001

FROM: Sumir Sennik, Esq.

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DATE: March 31, 2005

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McDonnell Boehnen Hulbert & Berghoff LLP

300 South Wacker Drive 312 913 0001 phone  
Chicago, Illinois 60606-6709 312 913 0002 fax  
www.mbhbl.com

April 7, 2005

**VIA FACSIMILE (212) 836-8689**

Mr. Sumir Sennik  
Kaye Scholer LLP  
425 Park Avenue  
New York, NY 10022-3598

Re: ARIAD Pharmaceuticals, Inc., et al. v. Eli Lilly and Company  
Civil Action No. 02-11280-RWZ

Dear Sumir:

Unfortunately, Dr. Gaynor's earliest availability is June 8, 2005. Please let me know as soon as possible if this date is acceptable as Dr. Gaynor's schedule fills rapidly.

Sincerely,

A handwritten signature in black ink, appearing to read "Alison J. Baldwin".

Alison J. Baldwin  
312 913 0001  
baldwin@mbhb.com

AJB/yb

APR-07-05 14:58 From: MCDONNELL 3128035570

T-723 P.01/02 Job-797



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**KAYE SCHOLER** LLP

Vladimir Drozdoff  
212 836-7629  
Fax 212 836-8689  
vdrozdoff@kayescholer.com

425 Park Avenue  
New York, New York 10022-3598  
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April 13, 2005

**VIA FACSIMILE**

Alison Baldwin  
McDonnell Boehnen Hulbert & Berghoff LLP  
300 South Wacker Drive  
Chicago, IL 60606

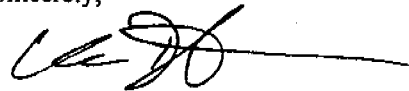
Re: ARIAD et al. v. Eli Lilly, Civil Action No. 02 CV 11280  
RWZ

Dear Alisor:

I am writing in response to your April 7, 2005 letter, which responded to the March 31, 2005 letter from Sumir Sennik indicating that Plaintiffs would not be able to take Dr. Gaynor's deposition on April 28 as offered by Lilly. Your letter indicated June 8, 2005 as the earliest alternative date on which Dr. Gaynor would be available for his deposition.

It is my understanding that at the scheduling hearing on April 6, Lilly proposed setting May 31, 2005 as the absolute deadline for any ongoing fact discovery cleanup. Assuming that the Court accepts Lilly's proposal, Plaintiffs will need to depose Dr. Gaynor before that date. Therefore, before we can consider your proposal, Lilly must first inform the Court that it is changing its position regarding the final date for discovery cleanup. Please provide us with an alternative date in May, or otherwise let us know how you wish to proceed.

Sincerely,



Vladimir Drozdoff

cc: Sumir Sennik

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## FAX COVER SHEET

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Alison Baldwin	312-913-0002	312-913-0001

FROM: Sumir Sennik, Esq.

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**McDonnell Boehnen Hulbert & Berghoff LLP**

300 South Wacker Drive 312 913 0001 phone  
Chicago, Illinois 60606-6709 312 913 0002 fax  
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April 20, 2005

**VIA FACSIMILE (212) 836-6337**

Mr. Vladimir V. Drozdoff  
Kaye Scholer LLP  
425 Park Avenue  
New York, NY 10022-3598

Re: **ARIAD Pharmaceuticals, Inc., et al. v. Eli Lilly & Company**  
**Civil Action No. 02-11280-RWZ**

Dear Vlad:

I write in response to your letter of April 13, 2005. I remind you that Lilly had previously offered a date in April for Dr. Gaynor's deposition, but Plaintiffs declined that date. At the time we offered this April date, we forewarned Plaintiffs that Dr. Gaynor's extensive travel schedule may make it difficult to find an alternative date in the near future.

Although we initially anticipated being able to schedule Dr. Gaynor's deposition for some time in May, Dr. Gaynor's travel schedule in May could not accommodate an entire day to be blocked out for a deposition. We have tried again to find a date in May in his schedule, with no luck.

If Dr. Gaynor's deposition goes forward in the beginning of June, we will certainly inform the Court at the next status conference.

Sincerely,

A handwritten signature in black ink, appearing to read "Alison J. Baldwin", written over a horizontal line.

Alison J. Baldwin  
312 913 0001  
baldwin@mbhb.com

AJB/yb

cc: Grantland Drutchas

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## Fax transmittal

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Phone	(212) 836-7629	Email	baldwin@mbhb.com
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April 29, 2005

**VIA FACSIMILE**

Mr. Sumir Sennik  
Kaye Scholer LLP  
425 Park Avenue  
New York, NY 10022-3598

Re: ARIAD Pharmaceuticals, Inc., et al. v. Eli Lilly and Company  
Civil Action No. 02-11280-RWZ

Dear Sumir:

I write in regards to our on-going correspondence to find a mutually agreeable date for the deposition of Dr. Gaynor. Although, on the one hand, we understand deposition scheduling difficulties and that the date in April that Dr. Gaynor made available for his deposition was not good for Plaintiffs, moving ahead on that date would certainly have alleviated the current difficulties in finding alternative dates for the deposition on Dr. Gaynor's calendar.

In response to your request, I have made yet further inquiries and, unfortunately, have confirmed that Dr. Gaynor is not available in May for this deposition due to long-standing commitments as Vice President of Cancer Research and Clinical Investigations and Genomic Technologies and Systems Biology. Dr. Gaynor is out of town for at least two weeks of May for conferences that were scheduled months ago, and is currently involved in two business transactions for Lilly requiring his input and travel during the remainder of the month of May. These are activities that Dr. Gaynor cannot reschedule.

We appreciate that Plaintiffs may be concerned by notes from Judge Zobel's clerk, which were entered on April 8, stating that "discovery is to be continued 2 months." It is not clear to us whether that is referring to fact discovery being continued 2 months from the date of the status conference or 2 months from the date that the notes were entered. Regardless, Lilly will agree to Dr. Gaynor's deposition taking place on June 8, 2005, whether that is the last day of the fact discovery deadline or two days afterward.

If Plaintiffs feel that it is necessary to file a motion with the Court to allow this deposition to take place on June 8, 2005, Lilly is willing to sign a Joint Motion to that affect.

Sincerely,



Alison J. Baldwin  
312 913 0001  
baldwin@mbhb.com



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## Fax transmittal

To	Mr. Sumir Sennik	Date	April 29, 2005
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